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TO PARTIES OF RECORD IN APPLICATION 13-12-014:

This is the proposed decision of Administrative Law Judge Mason. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 19, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:vm2

Attachment

Decision **PROPOSED DECISION OF ALJ MASON** (Mailed 10/19/2015)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Ridepal, Inc., a Delaware Corporation, for authority to operate as a passenger stage corporation and arrange transportation through a cloud-based delivery platform between the Counties of San Francisco, Contra Costa, Alameda, San Mateo, Los Angeles, and Santa Clara in the State of California, and the Cities of San Francisco, Oakland, Fremont, Newark, Hayward, Sunnyvale, Mountain View, Palo Alto, Menlo Park, Walnut Creek, Danville, Pleasanton, San Ramon, San Leandro, Campbell, San Jose, Saratoga, Cupertino, Walnut Creek and Glendale, as well as other future counties and cities in the State of California, and to qualify for exemptions thereunder as to schedules, points of service, maps, equipment, and fares (or in the alternative a Zone of Rate Freedom).

Application 13-12-014
(Filed December 23, 2013)

DECISION GRANTING RIDEPAL AUTHORITY TO OPERATE AS A PASSENGER STAGE CORPORATION, AND TO ESTABLISH A ZONE OF RATE FREEDOM; DENYING RIDEPAL'S REQUEST FOR EXEMPTIONS AS TO SCHEDULES, POINTS OF SERVICE, MAPS, EQUIPMENTS, AND FARES; AND IMPOSING A FINE FOR RIDEPAL'S OPERATION AS A PASSENGER STAGE CORPORATION WITHOUT FIRST OBTAINING COMMISSION AUTHORITY

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**DECISION GRANTING RIDEPAL AUTHORITY TO OPERATE AS
A PASSENGER STAGE CORPORATION, AND TO ESTABLISH A
ZONE OF RATE FREEDOM; DENYING RIDEPAL'S REQUEST
FOR EXEMPTIONS AS TO SCHEDULES, POINTS OF SERVICE,
MAPS, EQUIPMENTS, AND FARES; AND IMPOSING A FINE FOR
RIDEPAL'S OPERATION AS A PASSENGER STAGE
CORPORATION WITHOUT FIRST OBTAINING
COMMISSION AUTHORITY**

Summary

This decision grants the application of RidePal, Inc. (RidePal), for authority to operate as a passenger stage corporation, and to establish a Zone of Rate Freedom, subject to two conditions:

First, this decision denies RidePal's request for exemptions from Rules 3.3(a)(4)-(8) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Pull Notice Program, the Alcohol and Drug Testing Program, the mandatory controlled substance and alcohol testing certification training program of drivers, and the safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations. Instead, this decision requires RidePal to ensure that the passenger stage corporations holding charter party carrier certificates, as well as the charter party carriers that it subcontracts with, are in full compliance with Rules 3.3(a)(4)-8 of the Commission's Rules of Practice and Procedure, the Pull Notice Program, the Alcohol and Drug Testing Program, the mandatory controlled substance and alcohol testing certification training program of the drivers, and the safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.

Second, this decision imposes a fine on RidePal in the amount of \$213,500.00 for operating as a passenger stage corporation in violation of Public Utilities Code Section 1031(a) since RidePal did not receive a certificate of

public convenience and necessity from the Commission before it began its passenger stage corporation operations.

The grant of authority to RidePal to operate as a passenger stage corporation is contingent on RidePal agreeing to these conditions and paying the fine within 30 days after this decision is issued.

This proceeding is closed.

1. Background

1.1. Application

On December 23, 2013, RidePal, Inc., (RidePal) a Delaware Corporation, filed an application for authority to operate as a passenger stage corporation (PSC). RidePal proposes to conduct its business through a cloud-based delivery platform between the Counties of San Francisco, Contra Costa, Alameda, San Mateo, Los Angeles, and Santa Clara, and the California cities of San Francisco, Oakland, Fremont, Newark, Hayward, Sunnyvale, Mountain View, Palo Alto, Menlo Park, Walnut Creek, Danville, Pleasanton, San Ramon, San Leandro, Campbell, San Jose, Saratoga, Cupertino, and Glendale. RidePal also seeks exemptions as to the schedules, points of service, maps, equipment, and fares or, in the alternative, a Zone of Rate Freedom.

RidePal asserts that it provides commuting services for companies and individual riders by contracting with bus companies that are California Public Utilities Commission (Commission) licensed PSCs.¹ RidePal states that it does not own or operate the busses or employ the drivers. Instead, it determines the

¹ Application at 4.

routes, points of service and schedules based on service, demands, and then directs the contracting PSCs accordingly.

While RidePal requests authority to operate as a PSC, it states that due to its unique service, it “does not fit within any of the Commission’s regulatory framework and is unable to meet many of the requirements of a PSC under the Commission’s Rules.”² As such, RidePal requests that the Commission exempt RidePal from certain requirements that are set forth in Rules 3.3(a)(4)-(8) of the Commission’s Rules of Practice and Procedure (Rules), General Order (GO) 158-A, and Title 13 of the California Code of Regulations. These requirements are identified and discussed in greater detail section 3.2 of this decision.

1.2. Safety and Enforcement Division’s Motion to Accept Late-Filed Protest

On June 9, 2014, the Safety and Enforcement Division (SED) filed a motion requesting that the Commission accept its late-filed protest to the application. SED’s acknowledged that RidePal’s application was unique in that it did not fit neatly into any of the existing regulatory frameworks for PSCs and that a formal proceeding before an assigned Administrative Law Judge (ALJ) and Commissioner would be the more appropriate venue for resolving the application. After researching the application, SED determined to file a protest because the number of exemptions requested raised issues of compliance, reliability, and safety concerns for passengers. SED’s motion was granted and SED’s protest was accepted for filing. In its protest, SED took issue with each of RidePal’s requested exemptions from the PSC rules and regulations.

On August 8, 2014, RidePal filed its reply to SED’s protest, again arguing that because of the unique manner in which it conducts its business operations (*i.e.* RidePal neither owns or operates the PSC buses, nor employs the drivers, but

² Application at 4.

rather subcontracts these requirements to Commission-authorized bus companies), the exemptions were reasonable and appropriate. RidePal also emphasized that it had met with Commission staff in November 2013, to discuss these issues and the fact that exemptions would be needed.³

The reply included the declaration of Michelle Branch, Esq. (Branch Decl.), attorney for RidePal. Branch claims that:

- On April 18, 2012, she spoke to Darwin Hagar of the Commission and described RidePal's business model. She stated that Hagar told her that RidePal's services did not fall under the Commission' regulatory authority and that it did not need to obtain a license to operate.⁴
- On July 12, 2013, SED issued a Notice to Cease and Desist to RidePal to stop all advertisements and operations as a PSC since it did not have a valid CPCN.⁵ The Notice further referred RidePal to Pub. Util. Code §§ 226(a), 1031, 1034.5, 1037, 2108, and 5401.
- On July 25, 2013, RidePal's Chief Executive Officer (CEO) Natalie Criou and Branch called and spoke to Safety and Enforcement Division (SED) investigator Leticia Ramirez.⁶
- Ramirez informed Branch that the Notice of Cease and Desist would be temporarily suspended while RidePal worked with SED to provide more information about RidePal's operations.⁷

³ See E-mail from Sheila Zeller to SED employees dated November 20, 2013 and attached as Exhibit A to RidePal's August 8, 2014 reply to SED's protest.

⁴ Branch Decl. at 3.

⁵ *Id.*, at 5.

⁶ *Id.*, at 6.

⁷ *Id.*, at 7.

RidePal's reply also attaches, as Exhibit E, a letter from Ramirez dated October 30, 2013, which makes three statements of note. First, because RidePal charges individual fares and receives payment from riders, it is required to obtain a PSC certificate to continue operating. Second, Ramirez cites to Commission Decision 96-08-034 and quotes the following passage: "There is no basis in state law or policy for declaring that a PSC must own any vehicles or employ any drivers."⁸ Third, Ramirez concludes by instructing RidePal to either submit an application by November 20, 2013, or SED would pursue enforcement action. There is no reference in the Ramirez letter to the Notice of Cease and Desist being temporarily suspended, or that it was SED's opinion that RidePal could operate without a Certificate of Public Convenience and Necessity (CPCN).

1.3. Prehearing Conference

The prehearing conference (PHC) was held on October 20, 2014. At the PHC, RidePal and its counsel acknowledged that RidePal was currently operating without authority as a PSC while it awaits a decision in this proceeding:

Administrative Law Judge (ALJ) MASON: Okay.
Under what authority is RidePal engaging in business?
You don't have a TCP [charter party carrier certificate].
You don't have a PSC.

MR. CHAUVEL: There's no authority. Like Mr. Moore said, they were initially told they didn't need it. They started to operate, then they got a cease and desist letter. That's when our firm got involved. We came up, and we met with—with the license people and -and some enforcement people—I think there were four or five of them—and explained what we were doing. And they suggested we file a passenger stage application because of the individual fare and the schedule type of routes.⁹

⁸ *Id.*

⁹ Reporter's Transcript [RT] (October 20, 2014), 7:21-8:11.

During the course of the PHC, RidePal explained its operations in a manner that raised more questions about the nature of the authorization it needed to operate legally in California. When asked to explain the business, RidePal explained it contracts with charter party carriers ("TCPs") but also sold individual tickets on a bus ride:

MR. MOORE: We only use TCP-licensed operators. And they range -- our smallest is a 15-seat Sprinter that we've ever used, which is a vehicle made by Mercedes, all the way up to -- our largest to date is a 44-seat shuttle bus. But we envision growing the ridership and using full-sized 56-seat motor coaches, much like Google, Apple, or Facebook has used.

ALJ MASON: So if the company is contracting with charter party carriers -- did you say that? MR. MOORE: We contract through the suppliers the TCP operators.

ALJ MASON: So why are you applying for a PSC?

MR. MOORE: Originally we were told we did not have to get a license. We approached the PUC prior to filing this application, and we said we were using only TCP-licensed operators. They said you don't have to get a license. And then fall of last year, we got a cease and desist notice, which precipitated a meeting with the PUC, and then the application that is being questioned here.

ALJ MASON: Okay.

MR. MOORE: They suggested we do get a PSC license.

MR. CHAUVEL: 80 percent of the business is sold to corporate sponsors. They sponsor ridership of their employees. But the 20 percent is sold -- so what they're doing is they've got a bus. Maybe 40 people on the bus. One company into it might take 25 spots, but then the other 15 spots they'll match up with possibly

other companies or individual fares, the idea being to fill the bus.¹⁰

1.4. Request for Further Briefing

On February 5, 2015, the assigned ALJ issued a ruling for further briefing, and instructed the parties to brief issues relating to the Commission's jurisdiction over Ridepal, Ridepal's operating authority, Ridepal's subcontracting with licensed PSC's, SED's Notice of Cease and Desist, and whether or not hearings were needed in this proceeding. A deadline for filing opening and closing briefs was set forth in the ruling. SED and RidePal filed their Opening Briefs on February 20, 2015, and their Reply Briefs on February 27, 2015.

1.4.1. RidePal's Position

In RidePal's Opening Brief, it now claims that the Commission lacks jurisdiction over its services for three reasons. First, RidePal is not a TCP because it is not engaged in the transportation of persons by motor carrier.¹¹ Rather, the authorized carriers RidePal contracts with (i.e. either TCPs or PSCs) provide the transportation service as RidePal does not own, lease or operate buses, or employ drivers.¹² Additionally, rather than operate on a prearranged basis as required by Pub. Util. Code § 5360.5 for TCPs, RidePal aggregates the demand of multiple employers and then brokers the commute service required by corporate sponsors with authorized bus carriers. Although the majority of its bookings are made by companies, RidePal's website also allows individual unsponsored riders which

¹⁰ RT, 6:11-7:20.

¹¹ RidePal's Opening Brief at 3.

¹² *Id.*

are the minority of its ridership to book commutes.¹³ RidePal considers itself a “transit brokerage service” that falls outside the Commission’s jurisdictional mandate.¹⁴

Second, RidePal claims it is not a PSC because it does not own, control, operate, or manage any passenger stage. Although RidePal sets service delivery standards and defines commute routes, RidePal has no direct control over the service delivery on a day-to-day basis.¹⁵ The vehicles and drivers are controlled by the authorized PSCs that provide the transportation service.¹⁶

Third, RidePal claims it fits within the ridesharing exemption. It bases this argument on Pub. Util. Code § 226(c), which it claims applies to vehicles having a seating capacity of 15 passengers or less if the driver files with the Commission evidence of liability insurance in the same amount as required of a PSC and the vehicle undergoes and passes an annual safety inspection by the CHP.¹⁷

1.4.2. SED’s Position

SED asserts that the Commission does have jurisdiction over RidePal because RidePal currently contracts with Commission-licensed TCPs and PSCs to transport passengers for hire throughout points in California.¹⁸ Specifically, SED argues that RidePal should be considered a PSC because it charges

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ SED’s Opening Brief at 2.

individual fares and therefore fits within the presumption of operating as a PSC as stated in Pub. Util. Code § 1035:

Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single city or city and county, where the rate, charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part.

SED further argues that a PSC need not own a vehicle in order to be regarded as a PSC, and cites to the Commission decision of In Prime Time Shuttle International, Inc.¹⁹ What matters is that RidePal exerts control over the schedules, routes, fares of the contractors by entering into agreements with companies to transport their employees, and by offering services on an individual fare basis to passengers through its cloud-based app.²⁰

¹⁹ *Id.* at 4, citing to Decision (D.)96-08-034, 67 CPUC2d 437.

²⁰ *Id.*

1.4.3. What is RidePal?

As we will demonstrate, based on our review of the application, statements made by RidePal and by RidePal's CEO and its counsel at the PHC, the Notices of Cease and Desist, the supplemental briefings, and factual information uncovered by staff, we conclude that RidePal is operating as a PSC that: (1) contracts with corporate sponsors in order to transport the sponsors' employees; and (2) subcontracts with licensed PSCs and TCPs to pick up and transport both corporate sponsors' employees and individual commuters to destination points on one of RidePal's varying routes.

In reaching this conclusion, we acknowledge that the varying positions that RidePal has taken in the course of this proceeding have made it difficult to determine the nature of RidePal's operations and the requisite authority needed to allow RidePal to operate lawfully in California. RidePal's positions and actions have constituted a moving jurisdictional target and SED has acted to assert the Commission's authority over RidePal based on the shifting operational landscape. Tellingly, SED's second Cease and Desist to RidePal dated October 30, 2014 (and 10 days after the PHC), instructed RidePal to "cease and desist immediately all advertisements and operations as a PSC and as a TCP without valid authority in force with the Commission." Clearly from an enforcement perspective, when both of the July 12, 2013, and October 30, 2014 Cease and Desist Notices are considered, it was unclear if RidePal was attempting to operate as either a PSC, or a TCP, or both. Further complicating this matter is the fact that RidePal claims to contract with *either* PSCs or TCPs.²¹

²¹ RidePal's Opening Brief at 1.

Nevertheless, having considered the arguments that the parties advanced in their briefs, as well as the remainder of the record in this proceeding, the Commission now issues its decision that RidePal is, in fact, operating as a PSC and must be licensed by the Commission in order to legally continue with its services. We also conclude that the TCPs, as well as the PSCs with whom RidePal subcontracts with, must continue to comply with requirements for operation as a PSC in California. If the Commission were to agree with RidePal's request to exempt these regulated PSC vehicles from the PSC requirements while they are contracting with RidePal, many of the public safeguards the Commission has carefully put into place would be eliminated. Such a result would be contrary to the Commission's duty to ensure that the services provided by the entities subject to the Commission's jurisdiction are safe.

2. Commission Authority to Regulate PSCs

The Commission regulates PSCs under various provisions of the Public Utilities Code (Pub. Util. Code). PSCs are public utilities under the law.²² PSCs may operate only after being granted a CPCN by the Commission. (Pub. Util. Code § 1031, *et seq.*) Requests for new or the transfer of existing PSC certificates are made by formal application in accordance with the Commission's Rules. In addition to the information required of all formal applications, Rule 3.3(a) requires an application for a new PSC certificate to include the following:

²² "Public utility" is defined in Pub. Util. Code § 216(a) and includes every "common carrier," and the definition of common carrier includes every passenger stage corporation. (Pub. Util. Code § 211(c).)

- (1) The type of service being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.
- (2) The specific authority requested and the particular statutory provision under which the certificate is requested.
- (3) If a carrier of property, a description of specified commodities proposed to be transported, and, if general commodities with exceptions are proposed to be transported, a statement specifying such exceptions.
- (4) The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.
- (5) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.
- (6) A statement of the rates or fares proposed to be charged and rules governing service. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules and may refer to tariffs on file with or issued by the Commission.
- (7) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.
- (8) The kind and approximate number of units of equipment to be employed in the proposed service.
- (9) A statement of financial ability to render the proposed service.

- (10) Facts showing that the proposed operation is required by public convenience and necessity.

The Commission grants PSC certificates by a formal decision which finds that public convenience and necessity requires the proposed service.²³

2.1. RidePal Admits it is Currently Operating as a PSC.

In its application, RidePal states that its website allows individual riders and entities to access transportation via passenger stage vehicles.²⁴ RidePal further states that its “services are now being used by some larger Bay Area based entities that have numerous employees.”²⁵ Currently, RidePal is providing service in several counties (San Francisco, Contra Costa, Alameda, San Mateo, and Santa Clara) and cities (San Francisco, Oakland, Fremont, Newark, Hayward, Sunnyvale, Mountain View, Palo Alto, Menlo Park, Walnut Creek, Danville, Pleasanton, San Ramon, San Leandro, Campbell, San Jose, Saratoga, Cupertino, and Walnut Creek).²⁶ In its Opening Brief, RidePal asserts that “approximately 1,000 unique riders per month secure commute transportation with RidePal affiliates through the RidePal platform.”²⁷ There is no dispute, then, that RidePal is currently providing a transportation service with PSCs in California.

²³ *Order Instituting Rulemaking Regarding the Procedures for Processing Applications for Passenger Stage Corporations* (R.09-12-001) at 4.

²⁴ Application at 3.

²⁵ *Id.* at 4.

²⁶ *Id.*, at 6.

²⁷ RidePal’s Opening Brief at 2.

2.2. RidePal Admits it is Seeking Commission Authorization to Operate as a PSC

RidePal's application states that it seeks "authority to operate as a passenger stage corporation and arrange transportation through a cloud-based deliver platform." That request is repeated in the WHEREFORE provision of the application: "applicant prays this Commission issue its order as follows:

Grant authority to operate as a passenger stage corporation and provide service throughout the Greater Bay Area, as well as to and from Venice Beach and Glendale."²⁸

In the "Certificate To Operate" section of its application, RidePal cites Pub. Util. Code § 1031 and states that, while it "requests a certificate of public convenience and necessity to establish and operate as a passenger stage corporation[,] it seeks an exemption from Rules 3.3(a)(4)-(8) relating to PSCs.²⁹ This filing and the statements contained therein are important since, pursuant to Rule 1.1, any person transacting business with the commission must never "mislead the Commission or its staff by an artifice or false statement of fact or law." Thus, we take RidePal at its word that when it filed its application and asserted it was operating as a PSC and was seeking Commission authority to continue operating as a PSC, and reject RidePal's argument that the Commission's asserted jurisdiction over RidePal would "violate long-established principles regarding the scope of the Commission's authority."³⁰

²⁸ *Id.*, at 11.

²⁹ Application at 6.

³⁰ Ridepal's Opening Brief at 6-7.

In view of the Commission's clear regulatory authority over PSCs, as well as RidePal's admission that it wants to operate as a PSC, we reject RidePal's assertions that it is "transit brokerage service" that is outside the scope of the Commission's jurisdiction. We also reject RidePal's arguments that asserting jurisdiction over it would create duplicative or unnecessary regulation since, currently, RidePal is operating without any authority from this Commission or any other regulatory body.

Moreover, contrary to RidePal's suggestion, it would be procedurally improper to address, in the context of an application, if "a special class of [TCPs] could be created to avoid RidePal having to meet the unattainable requirements of Rule 3.3 and Pub. Util. Code §§ 1031 and 1032."³¹ Changes in Commission rules, regulations, and guidelines are handled in rulemakings, wherein the Commission may, on its own, "adopt, repeal, or amend rules, regulations, and guidelines for a class of public utilities or of other regulated entities[.]"³² As such, the Commission will address the substance of and the relief requested by the application in this proceeding.

3. Discussion

3.1. RidePal is in Violation of Pub. Util. Code § 1031(a) for Operating as a PSC Without First Obtaining a CPCN

Pursuant to Pub. Util. Code § 1031(a):

No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this state without first having obtained from

³¹ RidePal's Opening Brief at 8.

³² Rule 6.1.

the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any passenger stage corporation as to the fixed termini between which, or the route over which, it was actually operating in good faith on July 29, 1927, in compliance with the provisions of Chapter 213, Statutes of 1917, nor shall any such certificate be required of any person or corporation who on January 1, 1927, was operating, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sightseeing buses on a continuous sightseeing trip with one terminus only. Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission.

This is a fundamental requirement for operating as a PSC.³³

It is undisputed that RidePal is currently operating without authority as a PSC and has been doing so even before it filed its application with the Commission.

3.1.1. Ridepal may not Rely on Estoppel as a Basis for not Complying with California's Requirements for Operating as a PSC, or to Frustrate the Commission's Decision-making Authority

No record evidence excuses RidePal's failure to first comply with Pub. Util. Code § 1031(a). Despite what RidePal and its counsel believe staff said, the evidence is undisputed that RidePal received a Notice of Cease and

³³ *Id.*, at 5.

Desist on July 12, 2013, and that on October 30, 2013, investigator Leticia Ramirez told RidePal that it needed to obtain a PSC certificate to continue operating. A subsequent Notice of Cease and Desist was issued by SED on October 30, 2014, and “is currently in effect.”³⁴ Thus, whatever comments may have been said beforehand, as of October 30, 2013, at the latest, RidePal should have ceased operations until the Commission acted to grant RidePal’s application.

Moreover, once the application was protested, it was incumbent on the Commission, rather than staff, to resolve the question of whether a CPCN should be granted as it now is a discretionary determination that the Commissioners must decide. In the *Order Modifying Resolution ROSB-002 and Denying Rehearing of Resolution, as Modified*,³⁵ the Commission explained that its discretionary acts may not be delegated to staff:

Generally, the commission has stated that powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of a public trust and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. (*Bagley v. City of Manhattan Beach* (1976) 18 Cal. 3d 22, 24; *California School Employees Association v. Personnel Commission* (1970) 3 Cal. 3d 139, 144; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396.) Public agencies, however, may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to

³⁴ SED’s Opening Brief at 6.

³⁵ *Application of Union Pacific Railroad Company and BNSF Railway Company for Rehearing of Resolution ROSB-002*, D. 09-05-020; A. 08-12-004; 2009 Cal. PUC LEXIS 250 (May 7, 2009) at 3-4.

agency action (*California School Employees, supra* at 144), functions relating to the application of standards (*Bagley, supra* at 25), and the making of preliminary recommendations and draft orders (*Schechter, supra* at 397.) Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself at 3-4.

Thus, the opinion of a staffer is not binding on the Commission unless and until the Commission approves or ratifies the opinion.

Once there is a discretionary action that the Commission must decide, a staffer's prior opinion cannot bind the Commission. For example, in *Moore v. PG&E Co.* [D.92-04-022] (1992) 43 Cal.P.U.C.2d 629 [not published in full], 1992 Cal. PUC LEXIS 345 at 18-19, the Commission explained:

We are of the opinion that the prior determination of the Commission staff is not binding on this Commission simply because it was a staff determination and not a Commission determination. No formal proceedings were undertaken, no evidentiary hearings were held, no witnesses were examined and subjected to cross-examination, and no decision was issued by this Commission.

Even beyond the context of a complaint proceeding, the Commission has reasoned that regulated entities must not rely on staff as to matters that are within the Commission's discretion to decide. For example, in *Universal Marine Corporation v. San Pedro Marin*, [D.90334 at 17 (slip op.)] (1979) 1 Cal. P.U.C.2d 404 [not published in full], the Commission offered the following caution after a staff member told an applicant that a CPCN was [not] necessary before a certificate could be issued:

The record shows that San Pedro commenced the transportation...under the color of authority from its

prior attorney and a member of the Commission's staff. While advice given by the staff to the public is intended to be helpful, it does not bind the Commission, nor can it be considered as Commission action or policy since the Commission can only act as a body and in a formal manner.³⁶

Since the law is clear that staff's opinion cannot bind the Commission, it must necessarily follow that RidePal cannot succeed on a claim, to the extent it attempts to assert one, of estoppel premised on detrimental reliance. *In the Matter of the Appeal of Edwin G. and Rosalie Zalis, State Board of Equalization of the State of California*, 1984 Cal. Tax LEXIS 92 at 4-5 (June 27, 1984), the Court explained when an estoppel claim would be entertained against the government:

The doctrine of estoppel is applied against a government agency only when the elements of estoppels are clearly present and when estoppels is needed to prevent serious injustice. (*U.S. Fid. & Guar. Co. v. State Bd. Of Equal.*, 47 Cal. 2d 384 [303 P.2d 1034] (1956).) The doctrine of estoppel is applicable against the government only when there has been governmental action which has induced reasonable, detrimental reliance by the party asserting

³⁶ (See also Resolution G-3372, [after the Commission's Consumer Affairs Branch (CAB) had advised a customer whether PG&E bills were not consistent with its tariffs, the Commission stated that "[s]uch informal advice provided by staff is not binding upon the Commission which issues formal opinions only through its decisions and resolutions." (at 10, fn. 1.)]; *Madera Processing Corporation v. PG&E*, [D. 84-04-006], at 18; 1984 Cal. PUC LEXIS 269 (April 4, 1984) ["The comments made or advice given by Commission staff members in informal discussions do not constitute official Commission action."]; and *Order Denying request for Leave to File Application for Rehearing...In the Matter of the Application of Southern California Edison Company (U 338-E) for a Permit to Construct Electrical Facilities...* [D.05-01-060; A.03-03-043] at 14-15; 2005 Cal. PUC LEXIS 39 (January 27, 2005) ["But even if NOPE [the applicant for rehearing] had provided an affidavit detailing its claim that the Public Advisor's Office gave out incorrect information regarding the requirements for filing applications for rehearing, advice by advisory staff does not bind this Commission."].)

the defense and where the doctrine's use is required to prevent severe injustice.

The Zalis tried to invoke estoppel based on a letter written by a government tax agent which led appellants to believe that it was unnecessary for them to file a claim for a tax refund or take any other action. In rejecting this argument, the Court found that "[w]hile it is possible to interpret the language as appellants contend they did, the language certainly does not specifically state that no further action was required of appellants." (at 6.)

A similar rejection of the estoppel argument was made in *Benson v. California Coastal Commission*, 139 Cal.App.4th 348, 355 (2006), wherein the court explained:

Everyone is presumed to know the law. (*Arthur Anderson v. Superior Court* (1998) 67 Cal.App. 4th 1481, 1506 [79 Cal.Rptr.2d 879].) Indeed, Benson does not claim he was unaware that the Commission, not its staff, had the power to decide what action to take at the hearing. Under the circumstances, he could not reasonably rely on staff comments predicting what action the Commission would take.

In accordance with settled precedent, RidePal cannot prevail on a claim of estoppel. The law is clear that a CPCN is needed before a PSC commences operations in California, and nothing that Commission staff may have said can either change that legal requirement nor usurp the Commission's duty to decide RidePal's protested application.

3.1.2. Estoppel may not be used to Frustrate the Commission's Duty to Protect Ratepayers

A further and final reason for not invoking the doctrine of estoppel is that doing so would conflict with the Commission's duty to protect ratepayers. In the *Order In the Matter of the Application of San Diego Gas & Electric Company for*

Authority to Increase its Rates and Charges for Electric and Gas Service (NOI 21), [D. 82-12-058; A. 59788], at 29; 1982 Cal. PUC LEXIS 1307 (December 13, 1982), the Commission stated:

The Commission will conclude that the doctrine of equitable estoppels does not apply in this instance. The Commission can never be estopped from acting fairly and reasonably, balancing the interests of utility customers, investors, and employees, all of whom are entitled to rely on the Commission's acting fairly and rationally, using the best information available.

Accordingly, no prior staff opinion can prevent the Commission from making the ultimate determination of whether RidePal's application meets the public convenience and necessity standards for a PSC.

3.2. RidePal's Claimed Unique Business Model is no Grounds for Excusing it, or its Subcontracting Partners, from Complying with the Requirements for Operating as a PSC

In its application, RidePal notes that it "does not own or operate buses, nor does it employ or supervise drivers."³⁷ RidePal repeats this point in its reply to SED's protest under the heading "RIDEPAL'S UNIQUE SERVICE," and further states that it "determines its routes, points of service and schedules based on the needs of a route's corporate sponsors and its riders' demand, and directs the bus companies it utilizes accordingly."³⁸ RidePal again raises this argument in its Opening Brief.³⁹

³⁷ Application at 3.

³⁸ RidePal's reply at 2.

³⁹ RidePal's Opening Brief at 5.

As a result of its business model, RidePal requests that it be exempted from the following PSC requirements:

Rule	Description
3.3(a)(4)	The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.
3.3(a)(5)	A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.
3.3(a)(6)	A statement of the rates or fares proposed to be charged and rules governing service. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules and may refer to tariffs on file with or issued by the Commission.
3.3(a)(7)	A statement indicating the frequency of the proposed service, if “on call” service is proposed, the application shall set forth conditions under which such service would be performed.
3.3(a)(8)	The kind and approximate number of units of equipment to be employed in the proposed service. ⁴⁰

⁴⁰ These requirements are also found in GO 158-A, Rules 4.01-4.08.

In addition to the foregoing, RidePal also requests exemption from the following requirements:

Requirement	Description
Employer Pull-Notice (EPN) System	Administered by the California Department of Motor Vehicles (DMV). All applicants for PSC operating authority are required to participate in the EPN System and to inform the Commission of the requester code number assigned by the DMV.
GO 158-A, Part 10; Pub. Util. Code §§ 1032.1 and 5374(a)(2) and b)(1)(1); Commission Resolutions TL-19716 and TL-18760	Alcohol and Drug Testing Program.
GO 158-A, Part 10	Compliance with mandatory controlled substance and alcohol testing certification training program of the drivers.
Title 13, California Code of Regulations	Safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections. ⁴¹

When we look at the exemption request more closely, we see that it is premised on the argument of the PSCs that RidePal intends to subcontract with are already subject to the foregoing requirements, making it redundant and, therefore, unnecessary to impose these same requirements on RidePal. For example, with respect to Rule 3.3(a)(4)-(8), what RidePal is asking, in essence, is not an exemption for itself but for its subcontracting PSCs. In other words, RidePal wants the freedom to direct its subcontracting PSCs to operate without

⁴¹ RidePal's PHC Statement at 6-7.

regard to the restrictions set forth in Rule 3.3(a)(4)-(8). Similarly, as for GO 158-A and Title 13 of the California Code of Regulations, RidePal asserts that there is no reason to impose these requirements on it as RidePal is not purchasing or operating PSC vehicles. Those PSCs RidePal intends to subcontract with are already complying with GO 158-A and Title 13 of the California Code of Regulations, making it unnecessary to impose those same requirements on RidePal.

In requesting these exemptions, RidePal relies on Sections 1.07 and 9.01 of GO 158-A, which give the Commission the authority to authorize deviations from – or grant exemptions to – GO 158-A’s rules and regulations provided the applicant makes the appropriate factual showing. As we will demonstrate, RidePal has not made appropriate case for relief from the aforementioned PSC operating requirements.

3.2.1. It is not necessary to either own the PSC vehicles or employ the drivers to be considered a PSC

While RidePal uses a cloud-based delivery platform to arrange its transportation, its lack of ownership of the buses and use of subcontractors is not so unique as to provide a basis for exemption from the PSC operating prerequisites. Pub. Util. Code § 225 defines a passenger stage as follows:

Passenger stage" includes every stage, auto stage, or other motor vehicle used in the transportation of persons, or persons and their baggage or express, or persons or baggage or express, when such baggage or express is transported incidental to the transportation of passengers.

Pub. Util. Code § 226(a) defines a PSC as a common carrier that engages, “for compensation, in the ownership, control, operation, or management of any

passenger stage over any public highway in this state[.]”⁴² In Decision 96-08-034, the Commission examined the breadth of § 226 and reasoned that to satisfy the statute, “a PSC need not own the passenger stage it utilizes.”⁴³ Thus, regardless of whether RidePal owns the vehicles, or enters into subcontracts to manage their operations, “is immaterial” to the Commission’s determination. What matters is RidePal’s involvement in the control, operation, and or management of the PSC service.

D.96-08-034 also supports this outcome. The Commission was prescient when it observed that regulated utilities were starting to rely on other companies to perform part of the utility’s operations, and that unbundling did not make the utility any less subject to the Commission’s jurisdiction:

In fact, many of the traditional vertically integrated utility industries have been in the process of “unbundling” their services any relying on other companies to perform part of the utility operation. Thus, there are telecommunications carriers that do not own wires or switches, gas companies that have no firm pipeline capacity or long-term supplies, and electric companies that own no power plants or bulk transmission....

As such, there is no basis in Commission law or policy for declaring that a PSC must own any vehicles or employ any drivers.⁴⁴

Ownership and/or employer status, then, are not determinative of whether RidePal should be considered a PSC.

⁴² The exceptions in § 226(a) are not relevant here.

⁴³ 67 CPUC 2d at 452.

⁴⁴ *Id.*, at 453.

3.2.2. The use of a cloud-based application platform does not take RidePal out of the definition of a PSC that would excuse it from compliance with PSC requirements

Here, RidePal facilitates its PSC business through the use of a cloud-based platform. This may be one of the first instances where the Commission has been asked to grant a PSC certificate where the applicant is utilizing this type of technology. Thus, whenever a regulated utility develops a new mechanism for offering its services, the Commission must address whether the new mechanism removes the utility from the Commission's jurisdiction.

Recently, the Commission has had occasion to address this issue in Rulemaking (R.) 12-12-011, where it adopted new rules and regulations for online-enabled transportation services (referred to as Transportation Network Companies or TNCs) such as UberX, and Lyft, Inc., who connect passengers to a vehicle via wireless service, smartphones, and on-line applications or platforms. In Decision (D.) 13-09-045, the Commission asserted its jurisdiction over this nascent industry on the ground that TNCs were functioning as charter party carriers and therefore subject to Commission jurisdiction pursuant to Article XII of the California Constitution and the Charter-party Carriers' Act (Pub. Util. Code §§ 5351 *et seq.*).⁴⁵ The Commission further observed that the regulated utility's use of a technological innovation did not deprive the Commission of its duty to regulate this industry to ensure public safety:

In recent years, the communications revolution in wireless service, smartphones, and on-line apps has further facilitated the development and adoption of

⁴⁵ D.13-09-045 at 21-22.

passenger transportation for compensation to a point where passengers seeking rides can be readily connected with drivers willing to provide rides in private vehicles. This development in passenger transportation for compensation, referred to in this proceeding as TNCs and associated with companies including UberX, Lyft, and Sidecar, does not fit neatly into the conventional understandings of either taxis or limousines, but that does not mean that this Commission's responsibility to public safety in the transportation industry should be ignored and/or left for individual companies or the market place to control.⁴⁶

Like RidePal, the TNCs asserted that they were a new and innovative form of transportation, in that rides were facilitated by an on-line application, and that the TNCs did not own the transportation vehicles, and that the drivers were not their employees. Nevertheless, the Commission adopted specific rules and regulations that include the duty to: conduct a criminal background check on each driver; conduct vehicle inspections prior to allowing a vehicle to be driven as part of the TNC's service; obtain commercial liability insurance; and perform driving record checks until the DMV Employer Pull Notice Program is available for use by TNCs.⁴⁷

⁴⁶ *Id.*, at 11-12. Recently, the Legislature passed, and Governor Brown signed, Assembly Bill 2293, which codified the Commission's authority to regulate the TNC industry.

⁴⁷ *Id.*, OPs 4, 5, 6, and 7.

3.3. RidePal has not made a Sufficient Case for the Commission to Exercise its Discretion under GO 158-A Sections 1.07 and 9.01 to Excuse or Exempt RidePal from ensuring the PSCs it contracts with Comply Rules 3.3(a)4-8, the Pull Notice Program, and the Various Alcohol, Drug Testing, and Mandatory Controlled Substance Certification Programs

RidePal and SED were instructed to identify any cases where the Commission ever relied on GO 158-A, Sections 1.07 and 9.01 to excuse a PSC applicant from complying with Rules 3.3(a)4-8, the Pull Notice Program, and the various alcohol, drug testing, and mandatory controlled substance certification programs. While neither party was able to find a case, RidePal attempts to rely on Pub. Util. Code § 1032(a), *Greyhound Lines, Inc. v. Public Utilities Commission* (1958) 68 Cal.2d 406, and Pub. Util. Code § 701 for the proposition that the Commission can issue a PSC certificate “in such a manner so that it meets the needs of the public,”⁴⁸ which presumably means that Sections 1.07 and 9.01 may be invoked.

RidePal’s argument is legally flawed and is, in fact, undercut by the authorities it cites. First, there is nothing in Pub. Util. Code § 1032(a) that would vest the Commission with the authority to excuse an applicant from complying with Rule 3.3 and the other requirements identified above. Second, and as RidePal admits, *Greyhound* did not address Sections 1.07 and 9.01. The California Supreme Court affirmed the Commission’s decision to require Greyhound to extend its passenger stage service over routes in San Mateo County on the grounds that the extension was required by public convenience and necessity.

⁴⁸ RidePal Opening Brief at 14. See also 15.

Third, while it is true that the Commission has broad authority under Pub. Util Code. § 701, that authority is not so broad to vest the Commission with the ability to avoid a specific statutory scheme. The California Supreme Court reasoned in *Assembly v. Public Utilities Commission* (1995) 12 Cal.4th 87, 103, that Pub. Util. Code § 701's breadth would not allow the Commission to act in a way contrary to an expressed Legislative directive:

Past decisions of this court have rejected a construction of section 701 that would confer upon the Commission powers contrary to other legislative directives, or to express restrictions placed upon the Commission's authority by the Public Utilities Code. (*See, e.g. Pacific Tel. & Tel. Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 653 [144 Cal.Rptr. 1, 401 P.2d 353] ["Whatever may be the scope of regulatory power under this section, it does not authorize disregard by the commission of express legislative directions to it, or restrictions upon its power found in other provisions of the act or elsewhere in general law."].)

As such, the requirements for PSCs may not be excused unless RidePal can make a showing that public policy purposes served by these requirements are outweighed by RidePal's desire to operate unfettered by these restrictions. To answer this question, we must address the public policy purposes that underlie the PSC statutory requirements.

By way of background, in D.89-10-028, the Commission issued an order that revised the regulations pertaining to all forms of passenger carriers in order to meet public needs and to foster competition, especially in the passenger carrier services performed at airports. The Commission was prompted by the fact that the transportation of passengers in vans "evolved from an exception to our

timetable filing requirements into a popular, thriving market[.]”⁴⁹ The Commission’s “attention was drawn to this market by frequent carrier complaints of unlicensed carriers and unlawfully operating licensed carriers at major airports.”⁵⁰ After reviewing the recommended revisions from the Commission’s Transportation Division, this Commission, *inter alia*, cancelled GO 98-A and replaced it with GO 157 (Rules for TCPs) and GO 158 (Rules for PSCs).⁵¹

Later, GO 158 was superseded by GO 158-A, which was adopted on December 20, 1995, via Resolution TL-18716.⁵² Chapter 405 required the Commission, after consultation with the California Highway Patrol, to adopt these programs so that they were substantially similar to the program in Parts 40 and 382 of Title 49 of the Code of Federal Regulations. The need for testing programs was a result of Congress’ passage of The Omnibus Transportation Employee Testing Act of 1991,⁵³ which directed the Secretary of Transportation to prescribe regulations for the testing of employees for drugs and alcohol in four sectors of the transportation industry.⁵⁴

Finally, the California DMV created the EPN program to ensure safe driving records for workers in jobs in which driving is a crucial component. The

⁴⁹ 33 CPUC 2d 5, at 9.

⁵⁰ *Id.*

⁵¹ GO 98-A had previously superseded GOs 98 and 116. (*See* Decision 69331 [June 29, 1965].)

⁵² Resolution TL-18760 corrected technical errors to Resolution TL-18716.

⁵³ Pub.L. No. 102-143, Title V, 105 Stat. 952 (1991).

⁵⁴ *See American Trucking Associations v. Federal Highway Administration* (4th Cir. 1995) 51 F.3d 405.

EPN provides employers and regulatory agencies with a means of promoting driver safety through the ongoing review of driver records.

Given the dual concerns of competition and public safety, a compelling case would need to be made before the Commission would consider exercising its discretion provided in Sections 1.07 and 9.01 and allow a PSC applicant to deviate from these carefully calibrated rules and regulations. These policy concerns also distinguish this decision from *Order Instituting Rulemaking Concerning Broadband Over Power Line Development by Electric Utilities in California*,⁵⁵ upon which RidePal relies, because in that decision a finding was made that the requested exemption from Pub. Util. Code § 851 would not endanger the public interest.

As we will demonstrate, RidePal has not made that necessary showing.

3.3.1. Geographical Scope and Points of Service

Rule 3.3(a)(4) requires the PSC applicant to identify the geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route. RidePal would rather have the flexibility to expand its service as the need arises based on rider and corporate demand by adding routes and expanding to additional cities and counties without having to file a formal application and await approval. In response to SED's concern that such an exemption would create an unfair advantage over competitors, RidePal claims that it does not have any competitors that provide a similar service.⁵⁶

⁵⁵ 2006 Cal. PUC LEXIS 147, cited in RidePal's Opening Brief at 11.

⁵⁶ Application at 6; RidePal's PHC Statement at 5.

The fact remains, however, that RidePal is in competition with other PSCs who are serving the same cities and counties that RidePal has identified in its application. The only difference is that RidePal customers utilize the cloud-based platform. While other PSCs comply with 3.3(a)(4), RidePal would like the unrestrained ability to determine the geographic scope and points of service as dictated by consumer demands. The Commission is concerned that such an exemption would, indeed, have a harmful effect on competition and on the Commission's ability to ensure that RidePal is adhering to its designated geographic scope and points of service.

The request for exemption from Rule 3.3(a)(4) is denied. The routes that RidePal has submitted, however, are approved.

3.3.2. Maps of Points of Service

Rule 3.3(a)(5) requires that the applicant disclose the geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route. RidePal would, again, like the flexibility to determine maps of points of service on an as needed basis based on customer demand. RidePal asserts that there is no unfair competitive advantage because it doesn't have any competitors and if it did, it would welcome competing with other companies.⁵⁷

As noted above, RidePal is in competition with other PSCs who are serving the same cities and counties that RidePal has identified in its application. The only difference is that RidePal customers utilize the cloud-based platform. But RidePal is still attempting to attract the same riders as the other PSCs are

⁵⁷ Application at 8; RidePal's PHC Statement at 5.

trying to attract. Such an exemption would give RidePal an unfair competitive advantage.

The request for exemption from Rule 3.3(a)(5) is denied.

3.3.3. Proposed Fares/Zone of Rate Freedom

Rule 3.3(a)(6) requires that the applicant provide a statement of the rates or fares proposed to be charged and rules governing service. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules and may refer to tariffs on file with or issued by the Commission. SED argues it would be unfair to the public and to the competitors if RidePal was allowed to change its rates based on public demand. We agree with SED's concern and deny the request for an exemption from Rule 3.3(a)(6).

Alternatively, RidePal seeks authority under Pub. Util. Code § 454.2 to establish a Zone of Rate Freedom (ZORF) where it may assess fares and rates based on the volume of ridership.⁵⁸ RidePal claims that its current fares are 50 percent subsidized by sponsors and that if sponsorship ceased on any given route, it would have to increase its fares by as much as double.⁵⁹ The proposed ZORF rates are as follows:

For monthly fares:

For short-route monthly pass: \$155 above and \$50 below the proposed fare of \$155;

For a long-route monthly pass where public transportation competition exists: \$200 above and \$50 below the proposed fare of \$200; and

⁵⁸ Application at 7 and Exhibit E thereto.

⁵⁹ *Id.*, at 8.

For a long-route monthly pass where no competition exists:
\$230 above and \$30 below the proposed fare of \$230.

For a ten-ride pack:

For a short-route ten-ride pack: \$100 above and \$20 below the
proposed fare of \$66;

For a long-route ten-ride pack where public transportation
competition exists: \$100 above and \$20 below the proposed
fare of \$85; and

For a long-route ten-ride pack where no competition exists:
\$100 above and \$20 below the proposed fare of \$98.

For a day pass:

For a short-route day pass: \$15 above and \$5 below the
proposed fare of \$14.75;

For a long-route day pass where public transportation
competition exists: \$19 above and \$5 below the proposed fare
of \$19; and

For a long-route day pass where no competition exists: \$22
above and \$5 below the proposed fare of \$22.

For a single ride:

For a short-route single ride: \$10 above and \$5 below the
proposed fare of \$9.25;

For a long-route single ride where public transportation
competition exists: \$12 above and \$5 below the proposed fare
of \$12; and

For a long-route single ride where no competition exists:
\$13.50 above and \$5 below the proposed fare of \$13.50.⁶⁰

⁶⁰ *Id* at 7-8.

RidePal attempts to justify its ZORF by claiming that competition from other services will require it to be able to adjust rates and charges from time to time to maintain a competitive position in the marketplace and to adjust for a non-sponsored route scenario without forcing cancellation of the route.⁶¹

In contrast, SED opposes the ZORF as unreasonable since in some cases the fares will be doubled. SED argues that the maximum increase above currently-proposed fares be capped at \$20, and \$20 below the currently proposed fares.⁶²

We reject SED's proposal as it is too rigid and does not recognize the various price categories that RidePal is proposing to offer. We also disagree with SED's argument that the ZORF is unreasonable. While it is true that in some instances the proposed fare increases appear large, that is due to the fact that the proposed base fares are large since RidePal is offering monthly fares and ten-pack rides. In contrast, the individual fares do not appear outside of the range of requested ZORF fares that this Commission has granted to other PSCs.

Accordingly, the request for exemption from Rule 3.3(a)(6) is denied, and the alternative request for ZORF is granted.

3.3.4. Frequency of Proposed Service

Rule 3.3(a)(7) requires that the applicant provide a statement indicating the frequency of the proposed service. If "on call" service is proposed, Rule 3.3(a)(7) requires that the application set forth conditions under which such service would be performed. While RidePal did include a current proposed time schedule with

⁶¹ *Id.*, at 8.

⁶² SED's PHC Statement at 3.

its application, it has also requested an exemption because the frequency and time schedules associated with RidePal's service changes rapidly due to varying rider demand.

We are concerned that such an exemption would create uncertainty as to the availability and reliability of RidePal's service. If the service constantly changes, it seems difficult for riders to be able to plan their ridership and would result in uncertainty.

The request for exemption from Rule 3.3(a)(7) is denied.

3.3.5. Proposed Equipment

Rule 3.3(a)(8) requires the applicant to provide the kind and approximate number of units of equipment to be employed in the proposed service. RidePal claims that it is unable to provide a description of the equipment to be operated in its proposed service as the only features it requires its contracting carriers to provide are wireless internet service, bicycle racks, heating and air conditioning, minimum leg room, and minimum passenger capacity.⁶³

But RidePal knows the names of the PSCs that it has entered into services with and in fact has listed a few of them in its application.⁶⁴ As such, RidePal should be able to satisfy Rule 3.3(a)(8).

The request for exemption from Rule 3.3(a)(8) is denied.

⁶³ *Id.*, at 9.

⁶⁴ *Id.*, at 8.

3.3.6. Pull Notice Program, Alcohol and Drug Testing, Mandatory Controlled Substance and Alcohol Testing Certification Training Program, and Safety Requirements of the California Highway Patrol and Motor Carrier Safety Sections of Title 13 of the California Code of Regulations

As set forth previously, the EPN, drug testing, and certification programs were adopted to promote driving and passenger safety. RidePal has failed to provide any credible reason why those PSCs with whom RidePal contracts should not be required to comply with these rules.

As for the safety requirement of the California Highway Patrol and Motor Carrier Safety sections of Title 13 of the California Code of Regulations, we deny RidePal's request for an exemption on the grounds that its request is overbroad and vague, making it difficult for the Commission to determine from which portions of the cited laws RidePal is seeking exemption. If RidePal chooses to refile this application, it will be required to specify, in detail, the requirements from which it is seeking exemption.

3.4. RidePal's Business Model Permits us to Approve its Application to Operate as a PSC that Subcontracts with TCPs, and PSCs Also Holding TCP Certificates of Authority

In its Opening Brief, RidePal states that it offers a cloud-based service that allows businesses to arrange bus transportation for their employees, as well as individuals via PSCs or TCPs with whom RidePal has entered into a contract for services.⁶⁵

⁶⁵ RidePal's Opening Brief at 1.

Initially, we note that RidePal's characterization of its business model is problematic on several fronts. If RidePal is a PSC that contracts with other PSCs, the operation violates General Order (GO) 158-A, Part 3.03, which states that PSCs may only contract with licensed TCPs:

A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter-party carrier. The agreement for the utilization of the second carrier's vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carrier's names, TCP numbers, and the services to be provided.

If RidePal is a PSC that contracts with other TCPs, the operation could still possibly violate Commission rules. RidePal has stated that the capacity of the vehicles it contracts with is split roughly 80 percent for the contracting employer and 20 percent for the public. Such an arrangement violates GO 157-D, Part 3.01, since a TCP would need to have exclusive use of the vehicle:

Class A and Class B charter-party carriers, as defined in Public Utilities Code (Pub. Util. Code) Section 5383, and carriers holding permits under Pub. Util. Code § 5384(b) shall provide transportation only on a prearranged basis. The party arranging the transportation shall have exclusive use of the vehicle.

Additionally, pursuant to Pub. Util. Code § 5401, TCPs are supposed to charge fares based on mileage or time of usage, rather than by individual fares:

Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof. These charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported. However, no charter-party carrier of passengers shall,

directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis, except schoolbus contractors who are compensated by parents of children attending public, private, or parochial schools and except operators of round-trip sightseeing tour services conducted under a certificate subject to Section 5371.1, or a permit issued pursuant to subdivision (c) of Section 5384.

Nevertheless, there have been instances where a party seeking PSC authority, but wishes to hire TCP subcontractors licensed by the Commission, has had its application granted without running afoul of GO 158-A and Pub. Util. Code § 5401. In *Prime Time Shuttle*, the Commission held that a PSC's use of non-employee drivers and TCPs did not violate GO 158-A. This was true even if the subcontracting TCP collected individual fares pursuant to the PSC's tariff since, in the Commission's view, such an arrangement did not violate Pub. Util. Code § 5401's prohibition against TCPs collecting individual fares:

The fact that the charter-party carrier collects individual fares pursuant to Prime Time's tariffs in itself does not violate PU Code § 5401. In charter-party subcarriage, the driver and van are "hired" by and provide, service to the PSC (here, Prime Time), not the passenger. The passenger's agreement is with Prime Time, which is responsible for providing the service to the passenger. Any driver for Prime Time, whether employee or nonemployee, must collect the tarified fares and otherwise transport the passengers consistent with those tariffs. Any other interpretation of PU Code § 5401 would convert that statute into an absolute prohibition on the use of charter-party subcarriers by PSCs. We necessarily concluded in approving

GO 158-A that no such prohibition existed, and we affirm that conclusion.⁶⁶

In *Prime Shuttle*, the Commission focused on who has the control of the PSC relationship with the passengers and the subcontracting TCPs. As we will demonstrate, it is RidePal that exercises that control. In our review of how RidePal functions, it is clear that RidePal is more than a cloud-based operating system that operates like an electronic transportation broker. To the contrary, RidePal controls the fundamental aspects of how an individual PSC's, or TCP's, services are provided by the PSCs and TCPs with whom RidePal contracts. As we will explain, we reach this conclusion based on the representations of RidePal's CEO, RidePal's Application, and the Shuttle Service Agreement executed by RidePal and Corinthian International Parking Services, Inc. ("Agreement") that RidePal provided to Commission staff. This Agreement demonstrates the degree of control RidePal currently exercises over a PSC.

3.4.1. Control of the passenger registration

A passenger who wishes to avail itself of RidePal's service must go to RidePal's website, enter their contact and credit card information.⁶⁷ A credit card is not needed if the passenger's company sponsors one of the commuter busses.⁶⁸

3.4.2. Services to be Performed

In the Agreement, under the working hours heading, "the [s]ervices required of Corinthian under this Agreement shall be performed during the days and hours specified by RidePal in RidePal's sole and absolute discretion."⁶⁹

⁶⁶ 67 CPUC2d at 451.

⁶⁷ RT at 5:23-28.

⁶⁸ *Id.* at 6:1-3.

3.4.3. Minimum Service Requirements and Qualifications

The Agreement imposes various service requirements and qualifications on the subcontracting partner that include: (1) the duty to offer liability insurance for passengers; (2) hold a valid, commercial license for transporting passengers; (3) document that it complies with local, state, and federal laws; (4) perform services in compliance with safety regulations and work practice and with applicable federal, state, and local laws; (5) drivers have active commercial licenses; (6) confirm the acceptability of each driver's DMV record; and (7) equip vehicles with GPS tracking and other tracking/scanning devices.⁷⁰

3.4.4. Fares Charged

In Exhibit E to its Application, RidePal identifies the proposed fares for monthly rides, ten-pack rides, a daily ride, and a single ride. RidePal has also asked for a ZORF since it claims that it is not feasible for it to amend its rates with 10 days' notice due to the nature of riders' frequent changing demands and RidePal's "almost instantaneous response to those changing demands."⁷¹

3.4.5. Hold Harmless Agreement

RidePal requires that Corinthian must defend, indemnify, and hold RidePal harmless to the extent of any obligation imposed on RidePal arising from or in any way related to Corinthian's breach of the terms of the working relationship, or any claims by any government agency against RidePal or any of

⁶⁹ Agreement at 1.2.

⁷⁰ *Id.* at 5.10.

⁷¹ Application at 6.

the persons employed or retained by Corinthian to perform services for RidePal.⁷²

3.4.6. RidePal's Approval of Supervisory Personnel

Corinthian agrees to provide, during the performance of the services, supervisory personnel satisfactory to RidePal.⁷³

3.4.7. Subcontractor Services

Conrinthian agrees not to engage any subcontractor for services without RidePal's prior written approval.⁷⁴

3.4.8. Employment of Personnel

RidePal requires that Corinthian employ only qualified and licensed personnel, with drivers possessing an active California Class C driver's license, as well as a California Class B driver's license with passenger endorsement or other license compliant with California regulations specific to shuttle bus service.⁷⁵

3.4.9. Mandating Insurance Requirements

RidePal's CEO stated at the PHC that while RidePal does not own the vehicles it contracts with, it does "mandate that the operators have 2X—two times the nimum requirement of the Cal PUC law of 5 million. So all of our operators have at least 10 million."⁷⁶ RidePal requires that a PSC add the sponsoring companies and RidePal as additional insureds under the PSC's

⁷² Agreement at 4.3.

⁷³ *Id.* at 5.3.

⁷⁴ *Id.* at 6.3

⁷⁵ *Id.* at 6.2.

⁷⁶ *Id.*, 10:12-16.

policy.⁷⁷ Under the Agreement, it also provides that if Corinthian fails to carry the required insurance, RidePal's property insurance will not cover Corinthian's personal property, materials, or equipment, and Corinthian waives all claims against RidePal on account of any loss or damage to personal property, materials, or equipment.⁷⁸

Thus, despite RidePal's assertion that the contracting PSCs are independent contractors, RidePal plays an intimate and pervasive role in how clients are retained, how services are provided, and in establishing the insurance and indemnification requirements. This control confirms the Commission's conclusion that RidePal must operate as a licensed PSC, and that RidePal must also be required to ensure that the TCPs, or PSCs that also hold TCPs, it subcontracts with comply fully with the requirements set forth in Pub. Util. Code § 1031 and Rule 3.3.

3.5. RidePal does not Establish that it Fits Within the Ridesharing Exemption

As we discussed, *supra*, at § 1.4 of this decision, RidePal claims its fits within the ridesharing exemption set forth in Pub. Util. Code § 226(c), which it alleges applies to vehicles having a seating capacity of 15 passengers or less if the driver files with the Commission evidence of liability insurance in the same amount as required of a PSC and the vehicle undergoes and passes an annual safety inspection by the CHP.

⁷⁷ *Id.*, 11:9-11.

⁷⁸ *Id.* at 8.1(d).

Yet the requirements for a ridesharing exemption are more extensive than the seating capacity of the vehicle and the evidence of liability insurance. Pub.

Util. Code § 226(c) states:

“Passenger stage corporation” does not include the transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars (\$75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. “Profit,” as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

RidePal fails to demonstrate that it satisfies all of the requirements to fit within the ridesharing exemption. Specifically, there is no evidence that: (a) the passengers are all be transported between home and work locations; (b) that the passengers have a common worked-related trip purpose; (c) that the primary purpose for the transportation service is not for profit; and (d) the ridesharing is incidental to another purpose of the driver.

4. RidePal Should be Fined

Since the evidence is undisputed that RidePal has been operating as a PSC without having received authorization from the Commission, we must determine the amount of the fine RidePal must pay before receiving its PSC certificate. Decision (D.) 98-12-075 provides guidance on the application of fines. There, the Commission set forth the following five criteria, as well as subordinate factors, for determining the amount of a fine:

Criterion Number	Criterion	Subordinate Factors
1	Severity of the Offense	Physical harm to people or property; Economic harm; Harm to the regulatory process; and The number and scope of the violations.
2	Conduct of the Utility	The Utility's actions to prevent a violation; The Utility's actions to detect a violation; and The Utility's actions to disclose and rectify a violation.
3	Financial Resources of the Utility	Need for deterrence; and Constitutional limitations on excessive fines.
4	Totality of the Circumstances	The degree of wrongdoing; and The public interest.
5	The Role of Precedent in Setting the Fine or Penalty Amount	Are there previous decisions that involve reasonably comparable factual circumstances?

In applying the above criteria, we have determined that a fine should be issued pursuant to Pub. Util. Code §§ 2107,⁷⁹ 2108,⁸⁰ and Rule 1.1 of the Commission's Rules of Practice and Procedure.⁸¹ As for precedent for considering the appropriate fine, we consider past Commission decisions involving violations that occurred over multiple days. (*See, e.g. Cingular Investigation*, D.04-09-62 at 62 [849 days equals a penalty of \$10,000 per day]; *Qwest*, D.02-10-059 at 43, footnote 43; "In the case of a continuing violation each day's continuance constitutes a separate and distinct offense."; and *SCE's Performance-Based Ratemaking OIL*, D.08-09-038 at 111 ["\$30 million dollar fine equates to a daily penalty of just less than \$12,000 (\$30 million/7 years/ 365 days."].)

⁷⁹ Pub. Util. Code § 2107 states:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

⁸⁰ Pub. Util. Code §2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

⁸¹ Rule 1.1 states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

There is no dispute that RidePal has been operating as a PSC without Commission authority. It received the October 30, 2013 letter from SED's investigator, Leticia Ramirez, who advised that RidePal was required to obtain a PSC certificate to continue operating. Yet RidePal has continued to operate as a PSC even after it filed its application with the Commission. Taking the criteria from D.98-12-075 into account, we calculate RidePal's fine as follows:

October 30, 2013 (date of instruction to obtain a PSC CPCN) to December 31, 2014: 427 days × \$500 a day equals \$213,500.00.

Given the circumstances of this application, we elect to impose a lesser daily fine amount through the end of 2014. This has been a complicated application and the Commission has devoted considerable attention in drafting a decision that balances the public's safety interests and without stifling business innovation in the transportation sector. RidePal should not be punished throughout 2015 for the time it has taken to complete this decision.

5. Comments on Proposed Decision

The Proposed Decision of ALJ Mason in this matter was mailed to the parties on _____ in accordance with Section 311 of the Public Utilities Code. Comments were filed on _____ and reply comments were filed on _____.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

7. Categorization and Need for Hearings.

Resolution ALJ 176-3329's preliminary categorization for this matter is ratesetting and no hearings are required. This decision confirms that categorization and the determination that hearings are not required.

Findings of Fact

1. RidePal filed an application on December 23, 2013, to operate as a passenger stage corporation and to establish a Zone of Rate Freedom. As part of its application, RidePal requests exemptions from Rules 3.3(a)4, 3.3(a)(5), 3.3(a)(6), 3.3(a)(7), and 3.3(a)(8).

2. In its PHC Statement, RidePal also requests exemptions from the Pull Notice Program, Alcohol and Drug Testing, Compliance with the mandatory controlled substance and alcohol testing certification training program of drivers, and the safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.

3. Prior to filing its application, RidePal has been operating as a passenger stage corporation without receiving a passenger stage corporation certificate from the Commission.

4. Prior to operating as a passenger stage corporation, the Commission did not make a determination that RidePal met the CPCN standard to receive passenger stage corporation operating authority.

5. In April of 2012, RidePal's counsel contacted the Commission to determine if RidePal's operations fit within the Commission's regulatory authority.

6. On July 12, 2013, the Commission's SED issued RidePal a Notice to Cease and Desist. SED issued RidePal a second Notice to Cease and Desist on October 30, 2014.

7. On July 25, 2013, RidePal's counsel, Michelle Branch, and RidePal's CEO, Natalie Criou, called and spoke with SED investigator, Leticia Ramirez.

8. On October 30, 2013, Ramirez wrote to RidePal's CEO, Natalie Criou, and stated that, if RidePal did not submit an application for a Passenger Stage Corporation certificate by November 20, 2013, SED would pursue enforcement action.

9. A PHC was held on October 20, 2014. At the PHC, RidePal's counsel, Ronald Chauvel, stated that RidePal did not have a Charter-Party Carrier or Passenger Stage Corporation authority to operate, but was operating throughout the Bay Area.

10. RidePal has been operating as a passenger stage corporation since 2013 without having received authority from the Commission.

Conclusions of Law

1. RidePal Inc. is operating as a passenger stage corporation in violation of Pub. Util. Code § 1031(a).

2. RidePal has failed to make the necessary showing for the Commission to utilize its discretion under Sections 1.07 and 9.01 of GO 158-A to exempt or excuse RidePal from meeting the requirements of Rules 3.3(a)4-8.

3. RidePal has failed to make the necessary showing to be exempted from the Pull Notice Program, Alcohol and Drug Testing Program, the mandatory controlled substance and alcohol testing certification training program of the drivers, and the safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations. RidePal's application for authority to operate as a passenger stage corporation should be denied.

4. A passenger stage corporation may subcontract with a charter party carrier, or a passenger stage corporation that also holds a charter party carrier certificate.

5. The subcontracting charter party carrier may be instructed by a passenger stage corporation's tariff to collect individual fares from traveling passengers.

6. The request for a ZORF should be granted because the ZORF is fair and reasonable.

7. Pursuant to Pub. Util. Code 2107 and 2108, RidePal should be fined for violating Pub. Util. Code § 1031(a) for 427 days after it was advised that it needed Commission authorization to operate as a PSC. The fine should be set at \$500 per day for 427 days, which equals \$213,500.00.

O R D E R

IT IS ORDERED that:

1. RidePal, Inc.'s, application for authority to operate as a passenger stage corporation is granted but with conditions identified in Ordering Paragraphs 3, 4, and 5.

2. RidePal, Inc. shall file a written acceptance of the conditions, identified in Ordering Paragraphs 3, 4, and 5 with the Commission's Safety Enforcement Division within 30 days after the effective date of this Order.

3. RidePal Inc.'s (RidePal) request for exemptions from Rules 3.3(a)(4)-(8) of the California Public Utilities Commission's Rules of Practice and Procedure, the Pull Notice Program, the Alcohol and Drug Testing Program, the mandatory controlled substance and alcohol testing certification training program of drivers, and the safety requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations is denied. RidePal must be in full compliance with these requirements and demonstrate that the Passenger Stage Corporation's holding Charter Party Certificates that it sub contracts with, and Charter Party Carrier's with which it sub contracts with are in full compliance with these requirements on RidePal Inc.'s behalf.

4. RidePal, Inc. (RidePal) shall pay a fine in the amount of \$213,500.00 for operating as a passenger stage corporation in violation of Pub. Util. Code § 1031(a), without obtaining authority. The check or money order shall be made payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue,

Room 3000, San Francisco, CA 94102, within 30 days of the effective date of this order. RidePal shall write on the face of the check or money order "For deposit to the General Fund pursuant to Decision_____.

5. All money received by the California Public Utilities Commission's Fiscal Office pursuant to Ordering Paragraph No. 4 shall be deposited or transferred to the State of California General Fund.

6. RidePal, Inc. is authorized pursuant to Pub. Util. Code § 452.2 to establish a Zone of Rate Freedom as follows:

For monthly fares:

For short-route monthly pass: \$155 above and \$50 below the proposed fare of \$155;

For a long-route monthly pass where public transportation competition exists: \$200 above and \$50 below the proposed fare of \$200; and

For a long-route monthly pass where no competition exists: \$230 above and \$30 below the proposed fare of \$230.

For a ten-ride pack:

For a short-route ten-ride pack: \$100 above and \$20 below the proposed fare of \$66;

For a long-route ten-ride pack where public transportation competition exists: \$100 above and \$20 below the proposed fare of \$85; and

For a long-route ten-ride pack where no competition exists: \$100 above and \$20 below the proposed fare of \$98.

For a day pass:

For a short-route day pass: \$15 above and \$5 below the proposed fare of \$14.75;

For a long-route day pass where public transportation competition exists: \$19 above and \$5 below the proposed fare of \$19; and

For a long-route day pass where no competition exists: \$22 above and \$5 below the proposed fare of \$22.

For a single ride:

For a short-route single ride: \$10 above and \$5 below the proposed fare of \$9.25;

For a long-route single ride where public transportation competition exists: \$12 above and \$5 below the proposed fare of \$12; and

For a long-route single ride where no competition exists: \$13.50 above and \$5 below the proposed fare of \$13.50.

7. The grant of authority to RidePal, Inc. (RidePal), to operate as a passenger stage corporation is contingent on RidePal's written acceptance of these conditions and paying the fine within 30 days after this decision is issued.

8. Application 13-12-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.